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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 JOSHUA J. TRUEBLOOD,

11 Plaintiff,

12 v.

13 OFFICER SGT. CAPPOLA, *et al.*,

14 Defendants.

CASE NO. 3:19-cv-05816 RBL JRC

ORDER DENYING MOTIONS TO  
APPOINT COUNSEL AND TO  
SERVE PROCESS OF SUMMONS  
AND COMPLAINT

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16 This matter is before the Court on plaintiff's motion to appoint counsel (Dkt. 14) and "to  
17 serve process of summons and complaint." Dkt. 18. Plaintiff's motion to appoint counsel is  
18 denied without prejudice, meaning that plaintiff may renew it at a later date if plaintiff can show  
19 the exceptional circumstances necessary to justify the appointment of counsel. Plaintiff's motion  
20 "to serve process of summons and complaint" is denied as defendants have been sent the  
21 complaint and have each waived service of summons.  
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1 **BACKGROUND**

2 Plaintiff, who proceeds *pro se* and *in forma pauperis* (see Dkt. 5), brought this matter  
3 under 42 U.S.C. § 1983 in September 2019. See Dkt. 1. He alleges deliberate indifference by  
4 three corrections officers, which plaintiff believes resulted in him contracting a disease during  
5 his incarceration. See Dkt. 9.

6 The Court directed service of plaintiff's amended complaint on the three named  
7 defendants (see Dkt. 3), each of whom have now returned waivers of service of summons. See  
8 Dkts. 22–24. An attorney has also appeared and is representing the three defendants. See Dkt.  
9 21.

10 **MOTION TO APPOINT COUNSEL**

11 Plaintiff requests that this Court appoint counsel to represent him. See Dkt. 14.

12 There is no constitutional right to appointed counsel in a § 1983 civil action, and whether  
13 to appoint counsel is within this Court's discretion. *Storseth v. Spellman*, 654 F.2d 1349, 1353  
14 (9th Cir. 1981); see *United States v. \$ 292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir.  
15 1995). Appointment of counsel for indigent civil litigants under 28 U.S.C. § 1915(e)(1) requires  
16 “exceptional circumstances.” See *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (citing  
17 former 28 U.S.C. § 1915(d) (1996)), *overruled on other grounds*, 154 F.3d 952 (1998). To  
18 decide whether exceptional circumstances exist, the Court must evaluate “both ‘the likelihood of  
19 success on the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of  
20 the complexity of the legal issues involved.’” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th  
21 Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). “Neither of these  
22 factors is dispositive and both must be viewed together[.]” *Id.*

1 Here, plaintiff has not raised novel or particularly complex issues—rather, his complaint  
2 raises fairly straightforward issues involving whether corrections officers were deliberately  
3 indifferent to his safety in violation of the Eighth Amendment. *See* Dkt. 9. Moreover, at this  
4 early stage in the proceedings, when defendants have yet to file any answer or motion, the Court  
5 cannot say that there is a likelihood of success on the merits.

6 Plaintiff asserts that he has little knowledge of the law as a basis to grant counsel. Dkt.  
7 14, at 1. However, circumstances that are common to *pro se* plaintiffs—such as lack of legal  
8 training—do not amount to the exceptional circumstances necessary to appoint counsel. *Wood v.*  
9 *Housewright*, 900 F.2d 1332, 1335–36 (9th Cir. 1990).

10 Plaintiff also notes that he is diagnosed with post-traumatic stress disorder and that he is  
11 unable to contact his witnesses as reasons to appoint counsel. *See* Dkt. 14, at 1. While the Court  
12 is cognizant of the difficulties presented by plaintiff’s condition and incarceration, so far,  
13 plaintiff has been able to adequately litigate his case and present his claims, including amending  
14 his complaint in response to the Court’s show cause order. *See* Dkt. 7. Moreover plaintiff has  
15 not explained or presented information regarding why he is unable to contact witnesses or how  
16 the difficulties that he cites have hampered him from presenting his case so far. Nor has plaintiff  
17 explained why the options in the Federal Rule of Civil Procedure—which permit a party to seek  
18 discovery of non-privileged matters relevant to his case and proportional to his case’s needs—are  
19 inadequate. *See* Fed. R. Civ. P. 26(b)(1); *see also* Fed. R. Civ. P. 30 (regarding depositions by  
20 oral examination), 31 (depositions by written questions), 33, (interrogatories), and 34 (requests  
21 for production of documents). Therefore, the Court finds that plaintiff’s concerns do not at this  
22 time amount to the exceptional circumstances necessary to justify the appointment of pro bono  
23 counsel.

1 Plaintiff also states that his institution does not have a law library. *See* Dkt. 14, at 1. A  
2 plaintiff's statement that he lacks law library access, standing alone, will not automatically result  
3 in the appointment of counsel. *See, e.g., Williams v. Waddington*, C07-5216 RBL-KLS, 2007  
4 WL 2471674, at \*1 (W.D. Wash. Aug. 29, 2007) (finding that plaintiff had not shown that the  
5 legal issues in his case were complex or that he was unable to articulate his claims pro se, even  
6 though he could not access a law library); *Moore v. Philips*, 10-cv-3273, 2010 WL 5067823, at  
7 \*2 (C.D. Ill. Dec. 7, 2010) (the fact that there was no law library access did not merit the  
8 appointment of counsel at an early stage in the litigation); *Long v. Doe*, 08-cv-478-SLC, 2008  
9 WL 4950080, at \*2 (W.D. Wisc. Nov. 18, 2008) (although lack of access to a law library would  
10 make prosecution of his case more difficult, under the circumstances, it would not prevent  
11 plaintiff from litigating his case). Some districts have noted additional circumstances, beyond  
12 the mere lack of law library access, that could merit granting such a request. *See Alvarez v.*  
13 *Kristo*, cv-08-2226-PHX-DGC, 2009 WL 539676, at \*1 (D. Ariz. March 4, 2009) (in addition to  
14 no law library access, petitioner presented a novel and significant issue and there were no other  
15 available forms of legal assistance); *see also Covarrubias v. Gower*, C-13-4611 (EMC), 2014  
16 WL 342548, at \*1 (N.D. Cal. Jan. 28, 2014) (noting that there was no indication of a lack of  
17 other options, such as a legal paging system or ability to transfer to an institution with a law  
18 library). Here, however, plaintiff does not demonstrate that lack of access to a law library has  
19 prevented him from litigating his case.

20 For these reasons, the Court finds that plaintiff has not shown the exceptional  
21 circumstances required for the appointment of counsel. Because the denial of plaintiff's motion  
22 to appoint counsel is without prejudice, plaintiff may renew his motion at a later time, if he is  
23 able to establish the exceptional circumstances warranting appointment of counsel.

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**CONCLUSION**

Plaintiff's motion for the appointment of counsel (Dkt. 14) is denied without prejudice.

Plaintiff's motion for service (Dkt. 18) is denied.

Dated this 13th day of December, 2019.

ORDER DENYING MOTIONS TO APPOINT  
COUNSEL AND TO SERVE PROCESS OF  
SUMMONS AND COMPLAINT - 5